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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MEN THI PHAM,

Plaintiff and Respondent,

v.

TUNG HOANG VO,

Defendant and Appellant.

B203709

(Los Angeles County
Super. Ct. No. BC348585)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael L. Stern, Judge. Reversed.

Pete Nguyenton Nguyen for Defendants and Appellants.

Law Offices of Gilbert & Nguyen and Jonathan T. Nguyen for Plaintiffs and Respondents.

INTRODUCTION

This is a quiet title action (Code Civ. Proc., § 760.010 et seq.)¹ brought by a Vietnamese Catholic nun, Sister Men Thi Pham (plaintiff), against Tung Vo (defendant). Defendant held legal title to a residential property (the property) that was purchased by a group of religious donors² for use as a convent by plaintiff's order. Plaintiff asserted that she had established fee title to the property by adverse possession (§§ 324-325; Civ. Code §§ 1006-1007) or, in the alternative, that she had equitable title to the property. The trial court found for plaintiff and entered a judgment quieting title to the property in plaintiff's name on the basis of adverse possession. Both defendant and the group, which was not a party in the trial court, appealed.

We hold that the group is not a proper party to this appeal and dismiss its appeal. We also hold, however, that no substantial evidence supported the trial court's finding that plaintiff's possession of the property was hostile and adverse to defendant. We therefore reverse the judgment.

BACKGROUND

We state the facts in the light most favorable to the trial court's decision, resolving all conflicts and indulging all reasonable inferences to support the judgment. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, abrogated on another ground as stated in *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 100.) To the extent the trial court's findings of fact are not challenged on appeal, we accept the facts set forth in the trial court's judgment. (See *City of Merced v. American Motorists Ins. Co.* (2005) 126 Cal.App.4th 1316, 1322-1323.)

¹ All statutory references are to the Code of Civil Procedure unless stated otherwise.

² Adopting the parties' usage, we refer to the group of religious donors collectively as the "the group."

A. Factual Background

Plaintiff has been a member of the Holy Cross of Nha Trang order of Catholic nuns (the Order) for 43 years. The Order has been in existence for more than 50 years in Vietnam.

Father Tuan Pham (Father Pham) was a Vietnamese Catholic priest living in the United States. In 1995, he met plaintiff when he visited her convent in Vietnam. In 1999, the Order decided to send representatives to the U.S. to establish branches in New York and Southern California. Plaintiff was selected to found the Order's Southern California branch. Her mission was to recruit and train new nuns for the Order.

In 2000, Father Pham offered to help plaintiff find and purchase a house where she could live and perform her mission. Plaintiff knew a local real estate broker, The M. Nguyen,³ who had been her teacher in Vietnam. The M. Nguyen helped Father Pham and plaintiff find the property, which was located on Juan Street in Hawaiian Gardens. Father Pham authorized The M. Nguyen to offer \$201,000 to purchase the property.

To raise a down payment, Father Pham invited a number of local parishioners to attend a fundraising event at the home of Kim Chen Tran, a former nun of the Order. Ten donors contributed a total of \$42,800. The donors included Father Pham, who contributed \$3,000; plaintiff, who contributed \$3,000 on behalf of the Order; and a local business man, Cong Nguyen, who contributed \$25,000 through a family-owned corporation, H&H Perfection Fabrication, Inc. (H&H). Some of the donors testified at trial that they believed the property was to be purchased for and owned by plaintiff and the Order for use as a convent. Other donors testified that they believed the property was to be owned by the group and used for charitable purposes, which included providing a home for plaintiff. The trial court found that both positions were asserted in good faith.

³ Several participants in the relevant events share the same surname. We refer to these participants by their full names to distinguish them one from the other.

The funds generated by the fundraiser were used to make the down payment on the property. Escrow closed in July 2000. The real estate broker, The M. Nguyen, obtained a mortgage in his own name and, at Father Pham's request, took legal title to the property. The M. Nguyen testified that he took title "for Sister Pham and her convent."

The M. Nguyen paid the mortgage on the house for the first two months with his own money. Plaintiff took possession of the house in September 2000, and made the mortgage payment and paid the property taxes, insurance and other expenses with money that had been given to her by her parents. In October 2000, plaintiff held a housewarming party at which she raised enough money to pay the mortgage through December 2000. From December 2000 to July 2003, the mortgage was paid by H&H. Plaintiff continued to pay all other expenses, including the property taxes.

In May 2003, plaintiff organized the Southern California chapter of the Order as a nonprofit public benefit corporation (Corp. Code, § 5110 et seq.) (the "California Convent"). Plaintiff was the California Convent's only officer and its registered agent.

In July 2003, plaintiff wanted to refinance the mortgage to lower the monthly payments and to obtain a lower interest rate. Based on Father Pham's advice, and because plaintiff could not qualify for a loan, the refinancing transaction was structured as a sale of the property for \$167,000—the outstanding balance on the mortgage—from The M. Nguyen to defendant. Defendant was the brother-in-law of Cong Nguyen and a minority shareholder in H&H. Neither The M. Nguyen nor plaintiff had ever met defendant. Defendant testified that he participated in the transaction and took legal title to the property solely because he was asked to do so by Father Pham and Cong Nguyen.

Plaintiff paid the mortgage and all other expenses relating to the property from July 2003 to the end of 2005. Plaintiff sometimes took outside jobs and sold vegetables grown on the property to help pay those expenses. Defendant never lived on the property, and he did not visit it until late 2005.

In late 2005, while plaintiff was away from the property working, she received a telephone call from another nun residing on the property, Sister Anna. Sister Anna told plaintiff that defendant and Cong Nguyen had visited the property and told Sister Anna

that the nuns would have to move out so that the house on the property could be remodeled. Thereafter, defendant's wife telephoned plaintiff and told plaintiff to vacate the property by the end of February 2006.

Father Pham testified that the purpose of purchasing the property was to provide a home for local nuns and novices who had no place to stay and worship. He had made the decisions on behalf of the group regarding who would pay the mortgage and property taxes, in consultation with Cong Nguyen. He considered Sister Pham to be a tenant who reported to him. Cong Nguyen testified that, after Father Pham moved to a church in Westminster in 2005, he assumed decision making responsibility with respect to the property. He testified that he instructed defendant to evict Sister Pham after she filed this action.

B. Procedural Background

Plaintiff filed a verified complaint against defendant and his wife⁴ in March 2006 seeking, among other things, to quiet title to the property on a theory of adverse possession. In his verified answer, defendant asserted that he held "legal title as a resulting trustee for the benefit of the group organized by [Father Pham] which is the true equitable owner of the Property." The group consisted of "those who contributed" at the fundraising event.

In February 2007, plaintiff filed the operative first amended verified complaint. In the amended complaint, plaintiff purported to sue as a representative of the Order.⁵ Defendant and his wife were sued both individually "and as Personal Representatives of a

⁴ Defendant's wife was dismissed as a defendant during trial pursuant to the parties' stipulation. She is not a party to this appeal.

⁵ The California Convent was added as a plaintiff in the amended complaint, but it asserted no independent claims. The trial court found against the California Convent on all of its claims, and the California Convent has not appealed the judgment. We therefore refer only to plaintiff.

charitable group—name and form unknown.” Plaintiff alleged that defendant and his wife held “title to the Subject Property . . . in their individual capacities and/or as Personal Representatives of a charitable group of unknown name and form.” Neither the group nor its individual members were named as defendants. Plaintiff alleged five causes of action: (1) to quiet title to the property as against defendant on a theory of adverse possession; (2) for a declaration that defendant held title to the property as a constructive trustee for plaintiff’s benefit; (3) for restitution of the money plaintiff had spent on mortgage payments, property taxes and other expenses related to the property; (4) a common count for money had and received; and (5) for a declaration “as to the true ownership of the Subject Property and/or the fiduciary relationships between the parties.” The parties stipulated that defendant’s original verified answer would be deemed his answer to the amended complaint.

After a two day bench trial, the trial court found that plaintiff had established title to the property by adverse possession. The trial court concluded that the ownership interests asserted by representatives of the group at trial did not defeat plaintiff’s claim to adverse possession because neither the group nor its members held legal title to the property, and none had intervened or cross-complained in this action to assert their alleged rights to the property. The trial court found against plaintiff on her claims for a constructive trust, restitution and for money had and received, and plaintiff has not appealed those rulings. The trial court did not resolve plaintiff’s request for declaratory relief.

Defendant timely appealed. The notice of appeal also purported to be on behalf of “THE GROUP, An unincorporated association.”

DISCUSSION

A. The Group is Not a Proper Party to this Appeal

The group was not a named party in the trial court. On appeal, the group asserts that it is an unincorporated association whose members are the donors who contributed

money toward the down payment on the property at the fundraiser. The group contends that it has standing to appeal because it has a claim to ownership of the property adverse to plaintiff and would be bound by the judgment. Plaintiff disputes the group's existence as a cognizable legal entity, and argues that, even if such an entity exists, it was not a party in the trial court and therefore has no standing to prosecute this appeal.⁶

In this case, the group had no recorded interest in and was not in possession of the property; the group was not sued in its own name; the group took no affirmative steps to become a party of record in the trial court. Defendant—who purportedly held title to the property solely as the group's agent or representative—made no claim in the trial court that the group or its members were indispensable parties. (§§ 389, subd. (a); 762.010; 762.060, subd. (b).) The group was not a party of record in the trial court, and has no right to appeal the judgment.

The group argues that, although not a party in the trial court, it has standing to appeal because the judgment would be res judicata of its claim to the property. (See *Life v. County of Los Angeles* (1990) 218 Cal.App.3d 1287, 1295.) Because we reverse the judgment this is not an issue. The appeal by the group is dismissed.

B. Insufficient Evidence of Adverse Possession

1. Standard of Review

We review challenges to the sufficiency of the evidence under the substantial evidence rule. (*Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 935.) “Where findings

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As noted *ante*, plaintiff sued defendant both individually and “as Personal Representative[] of a charitable group—name and form unknown.” This is not the proper procedure in a quiet title action when joinder of a required defendant is feasible. The plaintiff is required to join as defendants *all* persons having an adverse claim to the property. (Code Civ. Proc. §§ 762.010; 762.060, subd. (b); cf. Code Civ. Proc., § 762.030, subd. (a) [if required defendant is *deceased*, plaintiff must join decedent's personal representative as defendant].)

of fact are challenged on a civil appeal, we are bound by the ‘elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor.” (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660; *Brewer v. Murphy, supra*, 161 Cal.App.4th at p. 935.) “Substantial evidence” is evidence that is reasonable, credible and of solid value. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 652.) We must affirm the judgment if it is supported by substantial evidence, even though substantial contrary evidence also exists. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

2. Adverse Possession

“In an action to quiet title based on adverse possession the burden is upon the claimant to prove every necessary element: (1) Possession must be by actual possession under such circumstances as to constitute reasonable notice to the owner. (2) It must be hostile to the owner’s title. (3) The holder must claim the property as his own under either color of title or claim of right. (4) Possession must be continuous and uninterrupted for five years. (5) The holder must pay all the taxes levied and assessed upon the property during the period. [Citations.]” (*Preciado v. Wilde* (2006) 139 Cal.App.4th 321, 325, quoting *Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 421; see generally 6 Miller & Starr, Cal. Real Estate (3d ed. 2000) Adverse Possession, § 16:2, pp. 6-8 (Miller & Starr).)

We focus here only on the second element, possession hostile and adverse to the owner’s title. “In order to perfect title by adverse possession, the possession of a claimant must be hostile and adverse. This requirement does not mean that the parties

have an actual dispute over the title, but merely that the claimant's possession is without recognition of any rights of the true owner.” (Miller & Starr, *supra*, Adverse Possession, § 16:13, p. 28, fn. omitted; see also *Sorensen v. Costa* (1948) 32 Cal.2d 453, 459; *Brewer v. Murphy*, *supra*, 161 Cal.App.4th at p. 940.) “Possession with permission and consent of the owner *is neither hostile nor adverse*. Possession that commences with the owner's permission does not become hostile or adverse *until the possessor has disclaimed the interests of the owner and has given the owner distinct notice of the hostile character of the possession*.” (Miller & Starr, *supra*, Adverse Possession, § 16:13, p. 29, fns. omitted, italics added; see also *Southern Pac. Co. v. City & County of S.F.* (1964) 62 Cal.2d 50, 56 (*Southern Pac.*); *Machado v. Southern Pacific Transportation Co.* (1991) 233 Cal.App.3d 347, 362 (*Machado*)). Use of the property in a manner consistent with the owner's consent “cannot form the basis of a claim of adverse possession” (*Southern Pac.*, *supra*, 62 Cal.2d at p. 56) without an “unqualified and definite renunciation of subordination to the owner . . . of sufficient clarity to put the owner on notice that subsequent possession is adverse to his title” (*Ibid.*)

These rules ensure that the owner has notice of the possessor's adverse claim and has the opportunity to take action to protect his or her title. “[T]he very essence of the requirement of ouster is *notice*.” (*Southern Pac.*, *supra*, 62 Cal.2d at p. 56; accord, *Machado*, *supra*, 233 Cal.App.3d at p. 362 [payment of property taxes alone not sufficient to put owner on notice of adverse claim].) “The owner must be informed in some way that the possession is hostile, or the statute does not operate against his right. The object of the statute in defining the acts essential to constitute an adverse possession is that the real owner may by unequivocal acts of the disseisor have notice of the adverse holding, and be thereby called upon to assert his legal title. [Citation.] The owner will not be condemned to lose his land because he has failed to sue for its recovery where he has no notice that it is held or claimed adversely Hostile occupancy consists of two elements: First, hostile intent in the mind of the adverse claimant, coupled with, second, knowledge on the part of the owner. These two elements must be present to support a claim of hostile occupancy. It is, therefore, not sufficient that the claim of right exist

only in the mind of the person asserting it. It must be manifested in such manner that the owner has knowledge thereof. [Citation].” (*Pacific Gas & Elec. Co. v. Crockett Land & Cattle Co.* (1924) 70 Cal.App. 283, 289.)

Defendant disclaimed beneficial ownership of the property, and the trial court made no finding as to whether the equitable owners are plaintiff and her Order (as plaintiff contends) or the group or its members (as defendant contends). For purposes of this appeal, it does not matter. It was undisputed at trial that plaintiff originally occupied the property with the consent of both the legal and equitable owners of the property, whoever they may be. The uses to which plaintiff put the property—which, the trial court stated, included residing there, sheltering visitors, performing social welfare work and tending the garden—are all within the uses contemplated by the owners’ (again, whoever they may be) consent to plaintiff’s occupancy. The 2003 refinancing transaction that resulted in legal title passing to defendant also was accomplished with the consent and cooperation of all persons involved, including plaintiff. Although plaintiff paid the property taxes on the property, this alone is insufficient to put the owners on notice of an adverse claim to title. (*Machado, supra*, 233 Cal.App.3d at p. 362.) There is simply no evidence that plaintiff sought to have legal title put in her name or in the name of the Order, used the property in a manner inconsistent with the owners’ consent, or otherwise made an unqualified and definite claim of adverse occupancy.

Plaintiff argues that her occupancy of the property was not permissive because there was no lease agreement between plaintiff and either the legal or equitable owners of the property. But plaintiff cites no authority that such an agreement is necessary. All of the relevant persons testified that they intended that plaintiff reside in the property. There is no evidence that anything changed in that respect until late 2005, only a few months before this lawsuit was filed.

Plaintiff argues that, because she occupied the property in the mistaken belief that the Order was the true owner, her occupation must be presumed to be hostile to the true owner’s title. This is incorrect. In the cases relied upon by plaintiff, the courts held that an adverse possessor could establish the requisite hostility by showing that “the

occupancy or use occurred through mistake.” (*Brewer v. Murphy, supra*, 161 Cal.App.4th at p. 940, quoting *Gilardi v. Hallam* (1981) 30 Cal.3d 317, 322.) But those cases concerned situations in which a person openly and notoriously possessed land in the mistaken belief that he or she owned the land, *without the consent* of the true owner. Because the occupation was nonconsensual, the person’s open and notorious possession of the land was itself sufficient to provide notice to the true owner of the possessor’s adverse claim. (*Gilardi v. Hallam, supra*, 30 Cal.3d at pp. 321-322 [citing cases].) As discussed *ante*, when a person occupies property *with* the true owner’s consent—even with the mistaken subjective belief that she is the true owner—she must manifest an “unqualified and definite renunciation of subordination to the owner . . . of sufficient clarity to put the owner on notice that subsequent possession is adverse to his title” (*Southern Pac., supra*, 62 Cal.2d at p. 56). Plaintiff’s good faith but unasserted belief that the Order was the true owner of the property was not sufficient to render her occupancy hostile for purposes of adverse possession. The judgment must be reversed.

C. Reversal

We reverse the judgment. There is no need for a retrial of the issues determined by the trial court. Plaintiff did not appeal the rulings adverse to her, and we have concluded that, after a full and fair opportunity to present her case, plaintiff failed to establish her claim for adverse possession. That issue need not be retried. (See *Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 682.) We leave it to the trial court to determine what further proceedings should occur.

DISPOSITION

The appeal by the group is dismissed. With respect to defendant's appeal, the judgment is reversed. The parties are to bear their own costs on appeal.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.